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April 23, 2015

Via U.S. Mail

Jennifer Dougherty, Esq.
Assistant Regional Attorney
Division of Environmental Enforcement
NYS Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2915

Re: Request for Information: 7015 Lockport Road, Niagara Falls, NY 14305
New York State Inactive Hazardous Waste Disposal Site No.: 932163

Dear Ms. Dougherty:

On behalf of Occidental Chemical Corporation ("Occidental"), I am writing in response to your February 23, 2015 request for information ("RFI") concerning the Niagara Highway Garage Site.

As a preliminary matter, your letter refers to Occidental Petroleum Corporation's Niagara Falls Plant in Niagara Falls, New York. Occidental believes that the reference to Occidental Petroleum Corporation is incorrect, and that the Department intended to request information concerning the Occidental Chemical Corporation facility located on Buffalo Avenue in Niagara Falls. If you would like to discuss this clarification further, please contact me at your convenience.

Occidental raises the following objections to the RFI:

1. Occidental objects to the RFI to the extent it is indefinite, vague, ambiguous, overly broad, and unduly burdensome.
2. Occidental objects to the extent that the RFI seeks documents in the public domain, because the burden of searching for and retrieving any such documents is the same (if not easier) for the Department, and because any documents that Occidental might select from the public domain would be protected from disclosure by the attorney work product privilege.

ATTORNEYS AT LAW

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3. Occidental objects to the extent the RFI requires production of information that is protected from disclosure by the attorney work product or the attorney/client privileges.
4. Occidental objects to the RFI to the extent it seeks information that is not relevant or reasonably calculated to lead to the discovery of information relating to the origin of hazardous substances found at the Site, outside the scope of what may be permissibly sought under Sections 27-1305, 1307, and 1309 of the Environmental Conservation Law, or not otherwise required to be produced under federal or state law.
5. Occidental objects to the scope of the RFI on grounds that it seeks information that was previously requested by the Department and produced by Occidental, including the information requested by the Department, supplied by Occidental, and published in the March 1979 Draft Report by the Interagency Task Force on Hazardous Wastes.
6. Occidental objects to the scope of the RFI to the extent it requests "any information concerning" various topics, on grounds that such a request is overly broad and unduly burdensome, and production of "any information concerning" those topics would be unnecessarily duplicative.
7. Occidental objects to Request No. 2 on grounds that it is not sufficiently tailored to the site at issue and, therefore, is overly broad and unduly burdensome.

Occidental has made a diligent and good faith effort to locate responsive information in its possession. Occidental reserves the right to modify and/or supplement its responses in the future, as appropriate, if additional information becomes available to it. Subject to and without waiving the foregoing objections, Occidental responds to the RFI as follows:



Responses

Request No. 1. Any information concerning the generation and disposal of BHC and BHC-related waste generated by Occidental's Niagara Falls facility and disposed of at the Site from 1940 to 1970.

Response: Following a diligent and good faith effort to locate responsive information in its possession, Occidental has not located any responsive information concerning the disposal of BHC and BHC-related waste at the Site from 1940 to 1970.

Request No. 2. Any information concerning disposal, including locations used for disposal of BHC and BHC-related waste generated by Occidental's Niagara Falls facility from 1940 to 1970.

Response: Occidental incorporates by reference, as if set forth fully herein, the information set forth in the March 1979 Draft Report of the Interagency Task Force on Hazardous Wastes. The investigation performed by the Interagency Task Force, including the Department, was performed pursuant to an Order of the Department's Commissioner and the Environmental Conservation Law. The Department relied on the 1977 Industrial Chemical Survey and the 1976 Hazardous Waste Inventory that Occidental (then known as Hooker Chemicals and Plastics Corporation) had previously supplied to the Department. Occidental then responded to the Department's detailed questionnaire and a follow-up interview that comprised the 1979 IATF Investigation. The information supplied by Occidental to the Department as part of that 1979 Investigation concerned waste generated and disposed by the Occidental Buffalo Avenue facility, and therefore is duplicative of the information sought in the RFI. In fact, the relevant time period for the RFI is entirely encompassed within the relevant time period that is the subject of the March 1979 Draft Report (1930-1977). According to the March 1979 Report, waste from the Buffalo Avenue Plant (including BHC and BHC-related waste, see III-71) was disposed at various company-owned and off-plant waste disposal sites, each of which are listed and discussed. The Niagara Highway Garage Site, however, was not one of the sites listed in the March 1979 Draft Report.



Jennifer Dougherty, Esq.
Page 4

April 23, 2015

The Interagency Task Force investigation was performed just nine years after the end of the relevant time period specified in the RFI, but more than 35 years ago, making the information supplied in response to the Interagency Task Force investigation considerably more reliable than any information that could be located today. The likelihood that any different information might be discovered at this time is extremely remote, and the utility of attempting to locate any such information is substantially outweighed by the significant burden that Occidental would otherwise endure to undertake an investigation to prepare the same inventory of disposal locations for BHC and BHC-related wastes generated by the Niagara Falls facility.

For these reasons, Occidental incorporates by reference, as if set forth fully herein, the results of the investigation set forth in the Interagency Task Force's March 1979 Draft Report (a copy of which is enclosed herewith). Based on its review of that Report, Occidental has not located any information indicating that the Niagara Highway Garage Site was a location used for disposal of BHC and BHC-related wastes generated by Occidental's Niagara Falls facility from 1940 to 1970.

If the Department has any further questions concerning the Niagara Highway Garage Site, please contact me at your convenience. Occidental is willing to meet with Department representatives to discuss its responses and objections to the RFI or the Niagara Highway Garage Site generally.

Respectfully submitted,

Phillips Lytle LLP

By 

Kevin M. Hogan

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Enclosure